

Canada - U.S. Free Trade Agreement

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CANADA-U.S. FREE TRADE AGREEMENT

INTRODUCTION

Canada and the United States have reached agreement in principle on the elements to be included in a free trade agreement. The historic Accord, which would eliminate virtually all tariffs between the two countries within 10 years, was tacitly agreed upon just minutes before an imposed deadline of midnight, 3 October 1987. Negotiations continued through the next day, however, with the two Parties signing the deal on 4 October 1987.

The detailed text of the Agreement was arrived at on 10 December 1987, after more than two months of discussions between Canadian and American negotiators. Although substantially the same as the earlier "Elements of the Agreement," the text also contains some important changes.

While the government had announced its intention to pursue a free trade agreement with the United States just two years before it achieved this goal, the idea is by no means new for Canada. In fact, free trade even predates Confederation and has been called the "issue that won't die." Since the Reciprocity Treaty between 1854 and 1866, a failed attempt to re-establish reciprocity in 1874 and the Canadian elections of 1878, 1891 and 1911, all of which turned on the issue, free trade has been a strong and recurrent theme in Canadian politics.

Before examining the recent Agreement and its attendant debate, it is important to understand the term "free trade agreement." Such an agreement involves the elimination of tariff and non-tariff barriers to trade between signatory countries, with each maintaining its respective tariff schedules with non-member nations. A stronger form of

economic integration would be a "customs union," which would involve not only dropping trade barriers between member nations but also the application of identical tariffs against outside countries. Still further economic integration would be achieved by allowing free movement of goods, services, labour and capital within the trading bloc. This is known as a "common market," the most prominent example of which is the European Economic Community (EEC). A final stage of integration would be "economic union," where national, social, taxation and fiscal policies would be unified and administered by a supranational institution. The Canada-U.S. Free Trade Agreement, then, represents the loosest form of economic integration, involving only the removal of mutual trade barriers.

CANADA-U.S. TRADE PATTERNS

Canada and the United States enjoy the largest flow of trade between two nations anywhere in the world, with about 80% of it unimpeded by tariffs. In 1986, Canadians shipped \$94 billion of merchandise exports to the United States and received \$76 billion in such U.S. imports in return. About 78% of Canadian merchandise exports went to the United States in 1986, while 69% of total merchandise imports originated in that country. During the past 10 years, the proportion of goods exports destined for the United States averaged over 70%, while the share of total goods imports originating in the United States also exceeded 70%.

Canada is the largest foreign market for U.S. goods, accounting for about 25% of total American exports in 1986. Traditionally, Canada has also been the largest source of American imports, being responsible for 19% of total U.S. imports in 1986. However, in 1986, Japanese imports into the U.S. eclipsed those from Canada for the first time.

The most significant Canadian merchandise exports to the United States include: passenger automobiles and chassis; natural gas; newsprint and other paper; motor vehicle parts, except engines; trucks, truck tractors and chassis; crude petroleum; petrochemicals and hydrocarbon products; pulp; softwood lumber; and precious metals. The leading U.S.

merchandise exports to Canada are: motor vehicle parts; passenger automobiles and chassis; computers; motor vehicle engines; trucks, truck tractors and chassis; and aircraft.

BENEFITS AND COSTS OF FREE TRADE

A. Economic Benefits

Supporters of free trade state that economic gains would flow from free trade because:

- lower prices for imports would increase consumers' real disposable income and decrease the cost of firms' inputs;
- a shift in production towards those goods produced at a relatively lower cost and away from some formerly tariff-protected goods would allow Canadian industry to exploit its comparative advantage more fully;
- increased imports would enhance competition, promoting efficiency and lowering prices of domestically-produced goods;
- Canadian manufacturing plants would specialize and expand to meet increased U.S. demand, thus exploiting economies of scale; and
- with prices determined abroad, existing Canadian exporters would reap the duty formerly paid to the U.S. Treasury.

Removal of Canadian trade barriers would decrease the price of imported and import-competing goods offered to Canadian consumers and reduce the cost of imported inputs to Canadian industry. As the price of imported goods fell, higher cost Canadian production would be displaced, resulting in employment losses. However, elimination of U.S. trade barriers would increase U.S. demand for Canadian goods, raising employment in industries producing them. Existing Canadian exporters would reap the "tax" on their product previously collected by the U.S. Treasury in the form of duties. The boost in export production would allow Canadian firms

to reduce per unit production costs by exploiting economies of large-scale production. The resulting increase in productivity would enable Canadian producers to raise wages and/or reduce prices. Prices would also be reduced through lower-priced imports. Lower prices, combined with stable or increased wages, would raise Canadian real income.

A Dissenting View

Some critics of free trade believe that the removal of Canadian tariffs would result in massive job dislocation and high transition costs. Specifically:

- if Canadian manufacturing could not compete with the U.S. sector, Canadian manufacturing production and jobs would eventually be replaced by production and employment in the U.S.;
- elimination of Canadian tariffs would prompt U.S.-owned companies to pull up stakes and shift production south of the border where they could supply the entire North American market; and
- employment gains would be made in the resource-based industries at the cost of manufacturing jobs, resulting in Canadians increasingly becoming "hewers of wood and drawers of water."

These critics have emphasized the transition costs of free trade, particularly in those sectors judged most vulnerable to U.S. competition. Modernization of Canadian industry, they suggest, could be met more effectively and humanely through a comprehensive industrial strategy that selectively rewarded winners and phased out losers than through the "cold shower" provided by free trade.

B. Evidence

A number of economic studies have estimated the actual impact on Canada of free trade with the United States. Although there has been a range of estimated outcomes, mainstream economists substantially agree that such an arrangement would provide economic gains for Canadians.

According to studies submitted to the Macdonald Commission, the long-term economic gains derived from bilateral free trade with the United States would range from 3% to 8% of Canadian GNP. (Other estimates of the potential gains from bilateral free trade range from 1.3% to 7.0% of Canadian real GNP.) In its Report, the Macdonald Commission attributed this wide range of estimates to the different methods and data employed by various researchers. The Commission argued, however, that the debate was over the magnitude of the benefits from free trade, not over their existence. Similarly, estimates of employment gains from free trade vary according to the data and assumptions made, but there is substantial agreement that such gains would be obtained. For instance, the Economic Council of Canada calculated that Canada-U.S. free trade would provide a net increase of 350,000 new jobs, while Informetrica Limited predicted a boost of 146,000. The government's own study, carried out by the Department of Finance, estimated that 120,000 net new jobs would be created by the fifth year of the implementation of the Agreement while the real incomes of Canadians would be raised by at least 2.5%.

C. Canadian Sovereignty

The major unresolved question regarding free trade does not lie within the economic sphere, however. It concerns Canadian sovereignty. Most critics feel that a free trade arrangement will involve a loss of Canadian sovereignty as negotiators will be required to sacrifice domestic social policies, including those dealing with Canadian culture and regional development. Furthermore, critics charge that a Free Trade Agreement will represent an irreversible step on a road leading to Canada's complete economic and political integration with the United States. The Trudeau government's "Third Option" paper was predicated on just such a view, resulting in an unsuccessful 10-year attempt to diversify Canadian trade away from the U.S.

Whether an agreement would eventually result in political integration remains the thorniest aspect of free trade, simply because it is impossible to prove either way without carrying out the experiment. To

support their case, critics of free trade point to the annexation of Hawaii by the United States after free trade between the two was established. On the other hand, proponents emphasize the case of Belgium or Holland, neither of which has had its sovereignty eroded since joining the EEC. Of course, no experience exactly parallels that of the Canada-U.S. case, so the debate is unlikely to be resolved through such comparisons.

Supporters of free trade argue that there is no reason to assume that the elimination of mutual trade barriers would lead either to a loss of Canadian values or to integration of Canada with the United States. They point out that the value of Canadian duties collected on U.S. goods has fallen from about 13% of the value of total imports in 1940 to less than 3% in 1986 without any observed loss of Canadian sovereignty or identity. Indeed, Canadian nationalism and this country's distinctive social programs have prospered in a climate of increasing trade liberalization between the two countries. Thus, further trade liberalization, particularly the elimination of the remaining Canada-U.S. tariffs, should not, in itself, seriously jeopardize Canada's sovereignty or national identity.

This should not imply that the Canada-U.S. Trade Agreement involves no infringement of Canadian sovereignty. The fact is that any international agreement inhibits a country's freedom of action to some extent. For example, through Canada's agreement to abide by the GATT, the Canadian government's freedom to implement policies with respect to subsidies, government procurement, tariff protection, non-tariff protection and other areas, is impaired. At the same time, a consensus exists in this country that the significant benefits derived from trade liberalization through the GATT compensate for such loss of sovereignty.

In the present case, the sovereignty issue must be similarly resolved on the basis of whether the benefits accruing under the Canada-U.S. Free Trade Agreement exceed the costs, including any restrictions imposed on future government actions.

D. Changing Circumstances

Recently, the United States brought trade actions against Canadian exports of cedar shakes and shingles, softwood lumber, steel forklifts, carnations, sugar products, whole, fresh groundfish and steel tubular products. A major U.S. anti-dumping trade action was also taken against Canadian potash in 1987 resulting in imposed duties of up to 85.2%. In addition, two omnibus trade bills, both fiercely protectionist and both of which, amongst other things, broaden the definition of what constitutes an unfair subsidy under U.S. trade law, have reached the congressional conference committee stage. Clearly, the trading environment is changing dramatically and the status quo will not continue to be available to Canadian industry, which depends on the U.S. market to absorb three-quarters of its exports. Therefore, the criteria by which the Free Trade Agreement is judged may prove to lie not only among the conventional economic or sovereignty arguments, but in how well it shields Canadian exports from future U.S. trade actions.

TEXT OF THE CANADA-U.S. FREE TRADE AGREEMENT*

A. Objectives and Scope

- to eliminate barriers to trade in goods and services between the territories of the Parties;
- to facilitate conditions of fair competition within the Free Trade Area;
- to liberalize significantly conditions for investment within the Free Trade Area;
- to establish effective procedures for the joint administration of this Agreement and the resolution of disputes; and
- to lay the foundation for further bilateral and multi-lateral cooperation to expand and enhance the benefits of this Agreement.

* Based on the full text of the Agreement released on 10 December 1987.

In order for the Agreement to pass the scrutiny of the GATT under the provision in Article XXIV, "the duties and other restrictive regulations of commerce ... are eliminated on substantially all the trade between the constituent territories in products originating in such territories." In this respect, the Agreement appears to have been successful, encompassing almost all goods and services traded between the two countries.

B. Border Measures

1. Rules of Origin for Goods

In order to qualify for "free-trade area" treatment, goods will need to be wholly produced in either Canada or the United States or both or, if they incorporate offshore raw materials or components, goods must be sufficiently processed in either country to be placed under a different tariff classification from the original imported materials. Some goods will also be required to incur a certain percentage of manufacturing cost in one or both countries in order to qualify for this treatment.

Apparel made from fabrics woven in Canada or the U.S. will qualify for duty-free treatment, whereas apparel made from offshore fabrics will qualify only up to the following levels.

	Non-Woolen Apparel (in million square yards)	Woolen Apparel
Imports from Canada	50	6
Imports from U.S.	10.5	1.1

Clothing exports incorporating amounts of offshore fabrics above these levels will be considered, for tariff purposes, as products of the country where the fabrics were obtained. Duty drawbacks (by which a government repays duties when imported goods are re-exported or used in manufactured exports) on imported fabrics will be available to Canadian clothing exporters should their exports to the U.S. consume more than the allotted quotas.

A quota of 30 million square yards has been set on exports to the U.S. of non-woollen fabrics or textile articles made in Canada from yarn imported from a third country.

Comments:

Testimony presented by John Ralston Saul to the House of Commons Standing Committee on External Affairs maintained that the Canada-U.S. Free Trade Agreement would permit the duty-free entry into Canada of billions of dollars worth of low-cost Mexican-made goods. Under what is known as the "Maquiladora" industrial program, raw materials and components may be imported duty-free into Mexico from the U.S., manufactured there and re-exported with an American value-added tax applied. Once inside the U.S., these goods are treated as having an American origin, according to Mr. Saul. This implies that the Mexican components of such goods would then be impossible to identify, thus rendering ineffectual the Free Trade Agreement's rules of origin.

Officials from the Trade Negotiations Office, in a letter and in testimony before the External Affairs and International Trade Committee, contradicted the statements made by Mr. Saul. In fact, Canadian trade negotiators have been aware of the Maquiladora industrial program and officials believe that the Free Trade Agreement's rules of origin will effectively prevent such an influx of Mexican goods disguised as American in origin. As under current law, it will be up to American exporters and U.S. customs officials to certify the level of American content in goods before they are exported to Canada. Failure to provide the proper documentation would disqualify goods under the Canada-U.S. FTA.

Further, as the text of the Agreement makes clear, U.S. materials would lose their "American origin" status once they entered a third country for further processing. For example, shirts sewn in Mexico using U.S. fabrics would qualify for duty-free re-entry to the U.S. under its outward processing program, but would fail to qualify for duty-free entry into Canada under the FTA. The Agreement contains provision for consultation and revision as well as safeguards to prevent circumvention of the rules of origin.

2. Tariffs

The Agreement calls for the elimination of all tariffs by 1 January 1998. Some will be eliminated immediately upon the Agreement's coming into force on 1 January 1989; others will be eliminated in five equal annual stages starting on 1 January 1989; still others will be eliminated in 10 equal annual stages starting on 1 January 1989.

Tariff cuts on certain specialty steel items will not begin until 1 October 1989, while tariffs on large telephone switching equipment will be phased out in three annual steps ending 1 January 1991.

Each country's tariffs vis-à-vis third countries will remain intact.

3. Customs Matters

Duty drawbacks are to be eliminated on bilateral trade five years after implementation of the Agreement. There are exceptions for drawbacks on citrus products and apparel made up from imported fabrics.

New customs duty waivers, granted for meeting certain performance requirements, will not be introduced as of 30 June 1988 and existing duty waivers (except those applying to the automotive industry) will be eliminated by 1 January 1998. U.S. Customs user fees are to be phased out on imports from Canada by 1 January 1994.

4. Import and Export Restrictions

Both parties agreed not to allow quantitative restrictions on exports or imports except as provided for under the GATT or allowed by the Agreement. Existing quantitative restrictions will be eliminated, either immediately or according to a timetable. Key provisions include:

- the elimination of the Canadian embargo on used aircraft and used automobiles;
- the removal of the U.S. embargo on lottery materials;
- maintenance of Canada's right to apply quantitative restrictions on U.S. vessels;
- retention by both parties of their right to control log exports;
- permission for continued Canadian controls on the export of unprocessed fish caught off the east coast;

- continued restriction by both countries of the importation of agricultural goods where this is necessary to protect supply management or support programs.

5. Other Export Measures

Both parties agreed that future export restrictions should not: reduce the percentage of total export shipments made available to the other party; impose a higher price on exported goods than is available for the same goods domestically; disrupt normal channels of supply to the other party.

Comments

This section, which provides the U.S. with a proportion of the total supply of Canadian goods, has proven controversial, particularly with respect to energy exports (see the section on energy). Critics argue that the section restricts the ability of Canadians to manage the use of their own resources.

The counter-argument is that supply management is still possible, provided the U.S. is not asked to bear more than its fair share of the supply deficiency burden. Some might also argue that it would be unreasonable to expect the United States to allow Canadian goods enhanced access to the U.S. market (perhaps resulting in U.S. dependency on such goods) without providing some assurance of their security of supply.

6. National Treatment

The provisions of Article III of the GATT, which requires that imported goods be treated no less favourably than domestically produced goods, is codified in this section of the Agreement.

Comments

Article III of the Gatt is intended to prevent countries from raising protectionist barriers by means of "back door" methods such as the imposition of excise or sales taxes on imported goods or through discriminatory regulations.

Some argue that this provision in the free trade agreement reduces the potential range of government action. It is clear, however,

that without the inclusion of such a provision it would be impossible to guarantee Canadian goods freedom of access to the U.S. market. With increased protectionist sentiment in the U.S., that country's tariff barriers could merely be replaced by a collection of discriminatory non-tariff barriers.

National treatment does not imply that imported goods must be accorded the same treatment as they receive in the foreign market. For instance, Canada can continue to prohibit the entry or sale of foreign hate literature or obscene material, since the sale of domestically produced items of this nature is prohibited.

7. Technical Standards

Both Parties agree that standards and regulations protecting health and safety, the environment, national security and consumer interests, are allowed. However, these standards must not be used to create unnecessary barriers to the goods of the other Party which meet these objectives.

Federal standards-related measures in the two countries will be harmonized to the fullest extent possible and harmonization of private standards will be promoted.

Transparency in the regulatory process will be enhanced.

Comments

Industrial and consumer products standards are likely to vary between countries for legitimate reasons but sometimes they may be designed for the purpose of restraining imports. For example, prior to the GATT Tokyo Round, Canadian officials cited a number of U.S. standards as possibly restricting trade, including the Consumer Product Safety Act and Fair Packing and Labelling Act, as well as requirements for marks of origin. Under the FTA, the federal government will still be permitted to impose labelling and safety standards on imported goods as long as domestically produced goods meet identical requirements.

C. Institutional Provisions

1. Binational Panel Dispute Settlement in Antidumping* and Countervailing Duty Cases

Domestic antidumping and countervailing duty laws in each country will continue to apply, and each Party may amend these laws, provided that:

- such amendment applies to the goods of the other Party only if specified in the legislation;
- the other Party is notified of proposed changes;
- the other Party is allowed prior consultation with the amending Party;
- any changes applicable to the other Party are not inconsistent with the GATT, its Antidumping Code and Subsidies Code, and with the object and purpose of the FTA.

Either Party may request that changes to the other Party's antidumping or countervailing duty statutes be referred to a panel for a declaratory opinion on whether the amendment:

- a) conforms to the GATT, its Antidumping Code or Subsidies Code, or the object and purpose of the FTA;
- b) has the effect of overturning a previous decision by the dispute settlement panel.

Should a panel recommend modifications to the proposed changes in the antidumping or countervailing duty statutes, the two Parties shall consult and seek to achieve a mutually satisfactory solution within 90 days of the panel's recommendation. If neither remedial legislation nor other agreement has been reached within nine months of the end of the 90-day consultation period, the aggrieved Party may take comparable legislative or equivalent executive action or terminate the Agreement upon a 60-day written notice.

A five-member bi-national panel will, at either Party's request, review a final antidumping or countervailing duty determination by a competent investigating authority of either Party and determine whether it

* Dumping is the sale of an imported commodity at a lower price than that at which it is sold within the exporting country or to third countries.

is in accordance with the importing party's law (including relevant statutes, legislative history, regulations, administrative practice and judicial precedents).

The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision. If required, the panel may review the action taken by the competent investigating authority on remand.

- The decision of a panel shall be binding on the Parties.
- If either Party requests a panel, a final determination shall not be reviewed under any judicial review procedures of the importing Party.
- Either Party may avail itself of the extraordinary challenge procedure if a Party alleges that the: the panel violated the rules of conduct; the panel departed from a fundamental rule of procedure; or the panel manifestly exceeded its powers, authority or jurisdiction; and any of these actions materially affected the panel's decision and threatens the integrity of the binational panel review process.

The rules of the bi-national review process will be designed to provide final decisions within 315 days of a request for a panel.

The provisions of this Chapter apply only to final determinations made after the entry into force of the Agreement and to declaratory opinions on amendments to antidumping or countervailing duty statutes enacted after the entry into force of this Agreement.

The provisions of this Chapter shall apply for five years while a new system of antidumping and countervailing duty laws is developed. There will be an extension of two years if the new system is not agreed upon and implemented within five years. After a total of seven years, if the new régime is not agreed upon, the Agreement can be terminated by either Party on six months' notice.

A Working Group will be established to develop rules and disciplines for government subsidies, unfair pricing and other problems arising from implementation of this Chapter.

Permanent Secretariat offices will be established to facilitate the operation of this Chapter of the Agreement and the work of panels or committees convened pursuant to this Chapter.

Comments

The sine qua non for Canadian approval of any free trade agreement has always been the inclusion of a provision in the pact affording Canadian exports protection from the perceived arbitrary and capricious trade actions of the United States. Not surprisingly, therefore, a great deal of debate and controversy centres upon whether the agreed dispute settlement mechanism does afford this protection.

Most of the criticism levelled at the dispute settlement mechanism stresses its failure to exempt Canada from U.S. countervail and antidumping law and the attendant proceedings. Critics charge that since the bi-national dispute settlement panel may rule only on whether a decision taken by a national authority is in accordance with its national law, it will be effectively handcuffed by existing U.S. trade law. Furthermore, critics argue, protective U.S. trade legislation, such as the omnibus trade bill working its way through Congress, threatens to make current U.S. trade law even more restrictive.

Supporters of the Free Trade Agreement acknowledge that the dispute settlement mechanism is not perfect but they assert that it is an improvement over the status quo. They point to the following aspects of this section of the Agreement to support their allegation.

First, once the Agreement is implemented, any changes to either Party's antidumping or countervailing duty law must explicitly name the other Party in order to apply to that Party's goods. This effectively eliminates the problem of "sideswiping" whereby Canadian exporters could be caught inadvertently in a U.S.-EEC or U.S.-Japan trade war.

Second, the Agreement provides for notification and consultation between both the Parties should an amendment to a countervailing or antidumping statute apply to either of them. If this fails to satisfy a Party, the matter may be referred to a panel for a declaratory opinion which may recommend modifications to a proposed amendment.

Third, the binational panel reviewing final antidumping and countervailing duty determinations provides for a shorter review process (315 days) than when a decision is appealed through the U.S. judicial process, which can take from two to four years to exhaust all legal remedies.

Fourth, the new system will be cheaper for exporters seeking appeal because the request for review by a panel would be made by a government rather than privately through the judicial process.

Fifth, the substitution of five panelists for one judge in the review process should result in more predictable determinations.

Supporters point out that to grant Canada exemption from U.S. trade laws without having agreement on a mutual set of anti-dumping and countervailing duty laws to replace them would be "putting the cart before the horse." The Agreement does provide for the development of a new system of anti-dumping and countervailing duty laws over a period of up to seven years. Once agreement is reached on this new common set of rules, it is felt that the scope for disagreement on trade practices will be substantially reduced.

The elimination of trade barriers may in itself reduce the incentive to practise dumping. For example, without tariffs to separate markets, dumping goods into the neighbouring country's market could backfire if the goods were shipped back to the country of origin. Through the inclusion of such a "boomerang clause," the EEC Treaty guarantees countries the right to re-export any goods to the country of origin.

Before agreement on a mutual set of fair trade rules, the bi-national dispute settlement panel must use the respective country's current trade law. However, this does not necessarily mean that it will constitute merely a rubber stamp on the previous authority's ruling. For example, it is widely accepted that the U.S. International Trade Administration's preliminary ruling on Canadian softwood lumber was badly flawed with respect to methodology and U.S. law. Some argue that if the dispute settlement panel had been in existence in 1986-87, Canadian softwood lumber producers could have won the countervailing duty case on appeal to the panel.

2. Emergency Action

If imports from the other Party are causing serious injury during the transition period, the importing Party may suspend the reduction of any duty, increase the duty up to the lower of the current MFN rate or the pre-Agreement rate or to corresponding pre-Agreement seasonal rates.

An action requires prior notification and consultation, is limited in duration to a period of three years, may not be taken more than once during the transition period against a particular good and is not to take effect beyond the transition period except with the consent of the other Party.

The exporting Party will be provided with mutually agreed upon compensation, or may take tariff action of equivalent effect.

Emergency actions taken by a Party on a global basis under Article XIX of the GATT shall normally exclude imports from the other Party from these actions unless these imports exceed 5%-10% of total imports.

Prior notice and consultation must be provided before either Party implements a global action. This action should not reduce the other Party's imports below the trend of imports in a recent base period.

Mutually agreed trade liberalizing compensation in the form of concessions shall be provided by the Party taking such trade action.

The Articles of the Agreement respecting Arbitration and Panel Procedures do not apply to proposed actions under this Chapter.

Comments

Currently, the U.S. takes safeguard measures under section 201 of the Trade Act while Canada uses section 8 of the Customs Tariff. The Agreement provides for bilateral safeguard actions against goods of the other Party during the transition phase while maintaining each Party's right to take global action. However, under the global track, imports from the other Party must be substantial (at least 5%-10% of total imports) in order for the action to apply to them; thus "sideswiping" of Canadian goods would be reduced. By specifying that a global action may not reduce imports from the other Party below the trend of a recent base period, the Agreement further restricts the U.S. President's ability to limit Canadian goods under a section 201 action.

3. Other Institutional Provisions

The provisions of this Part apply to all disputes regarding the interpretation or application of the Agreement or whenever an actual or proposed measure of a Party is considered to be inconsistent with the obligations of the Agreement or would nullify or impair the benefits the other Party expects to receive. Excepted from the provisions of this Part are matters covered in the Chapters of the Agreement "Financial Services" and "Binational Dispute Settlement in Antidumping and Countervailing Duty Cases."

Disputes arising under both the Agreement and the GATT may be settled in either forum but invocation of one procedure will exclude the use of any other.

The two Parties will establish the Canada-United States Trade Commission to supervise the implementation of the Agreement, resolve disputes, oversee the Agreement's further elaboration and consider any other matter affecting its operation. The Commission will be composed of members from both countries, with the principal representative from each being the Cabinet-level officer responsible for international trade, or designate. Decisions of the Commission are to be taken by consensus.

Each Party must notify the other of any legislation, regulation or government procedure that might materially affect the operation of the Agreement and either Party can request consultations on measures which it considers might do so. Failure to resolve a dispute through consultations within 30 days will enable either Party to request a meeting of the Commission.

The Commission may refer disputes to binding arbitration if, after a further 30 days, the dispute has not been resolved. Failure to implement the findings of the arbitration panel would require either compensation by the non-complying Party or allow the suspension of equivalent benefits of the Agreement by the complainant.

Comments

The general dispute settlement panel which can be established by the Canada-United States Trade Commission represents another mechanism to resolve trade disagreements. The mechanism may be activated

whenever an actual or proposed measure of one Party is considered to "be inconsistent with the obligations of this Agreement." Such an inconsistent measure might well include a decision taken by a U.S. agency or trade authority. Pending the development of new trade rules, this provision may prove to be extremely valuable in addressing technical trade cases such as those involving potash, hogs and pork, raspberries, fresh cut flowers and others that could not have been argued successfully under U.S. trade law.

As international trade lawyer, Debra Steger, has noted, the institutional provisions of the Agreement are an improvement over the existing system for the following reasons:

- the Agreement provides for the establishment of a formal, bi-national procedure to deal with existing or proposed measures which would affect trade between the two countries. At present, there is no method of dealing with Canada-U.S. trade disputes outside of the GATT;
- the Agreement's time limits for the resolution of disagreements are much stricter than those of the GATT;
- the FTA's arbitration panel may, in certain cases, make decisions which are legally binding on both countries and their agencies while the GATT may not;
- reaching a consensus should prove considerably less time consuming for the bilateral Canada-U.S. Trade Commission of the FTA than for the 50-member GATT Council;
- the formal legal process for arbitration and adjudication supervised by the Canada-U.S. Trade Commission may also provide less opportunity for the larger country to impose its will on the smaller by using its greater political and economic weight to delay and defeat the dispute settlement process.

D. Regulatory Aspects

1. Investment

This Chapter does not apply to measures affecting investments related to the provision of financial services (except when such measures relate to the provision of insurance services and are not dealt with under the Agreement), government procurement and transportation services.

The two Parties agreed to:

- provide national treatment to each other's investors in establishing, acquiring, conducting and operating or selling enterprises;
- demand no minimum levels of equity holdings by nationals in firms controlled by the other Party's investors;
- refrain from demanding divestiture by other-Party investors by reason of their nationality;
- allow exceptions for new measures Canada may introduce respecting any existing federal or provincial government-owned business enterprise, or for the disposition of a business by a Crown corporation;
- allow exceptions to national treatment, provided that differences in treatment are no greater than necessary for prudential, fiduciary, health and safety, or consumer protection reasons and treatment is equivalent in effect to that accorded domestic investors and provided that prior notification has been given;
- impose no export, import substitution, domestic sourcing or domestic content requirements on each other's investors or on third-country investors if this could significantly affect U.S.-Canada trade;
- exempt reviews by Investment Canada of acquisitions from the dispute settlement provisions of the Agreement;
- refrain from expropriating investments by each other's investors except on a non-discriminatory basis and with adequate compensation;
- allow free transfer of profits and remittances, except in specific circumstances;
- grandfather existing laws and regulations;
- accept that nothing in this Chapter affects either Party's rights and obligations under the GATT or under any other international agreement to which both are party.

U.S. direct acquisitions of control of Canadian businesses will continue to be reviewed but by the third anniversary of the implementation of the Agreement will be limited to businesses with gross assets of more than \$150 million. Review of U.S. indirect acquisitions (i.e., by

purchase of the foreign parent of a domestic subsidiary) in Canada would be phased out by the third anniversary of the implementation of the Agreement. Cultural industries are excluded from the investment provisions of the Agreement.

Comments

The Investment Canada Act, proclaimed on 30 June 1985, set out less stringent criteria for screening foreign investment in Canada than had been included in the preceding legislation, the Foreign Investment Review Act. Investments now subject to review by Investment Canada are:

- all direct acquisitions of control by non-Canadians of Canadian businesses with assets of \$5 million or more;
- all indirect acquisitions of control by non-Canadians of Canadian businesses with assets of \$50 million or more;
- all indirect acquisitions of control by non-Canadians of Canadian businesses with assets between \$5 million and \$50 million in which the Canadian portion represents more than 50% of the value of the total international transaction.

In addition, investments related to Canadian culture or national heritage may be reviewed if such a review is deemed by the Minister to be in the public interest.

On the surface, the substantial increases in the screening thresholds for direct and indirect investment proposed in the Free Trade Agreement appear to be major concessions to the United States. However, it is important to note that although Investment Canada reviewed a total of 310 U.S. investments between proclamation of the Investment Canada Act on 30 June 1985 and 30 June 1987, none of these failed to meet the review criteria.

Provision in the Agreement of "national treatment" to U.S. investment already located in this country reflects the OECD "Declaration on International Investment and Multinational Enterprises" adopted by

member countries at the June 1976 meeting of the OECD council at Ministerial level. This instrument encourages member states to treat foreign enterprises in a non-discriminatory fashion.

Further, the prohibition in the Free Trade Agreement against imposition of domestic content, domestic sourcing or import-substitution requirements on the other country's investors is consistent with Article III of the GATT, which requires non-discriminatory treatment of foreign products.

Canada has violated Article III on more than one occasion. In July 1983, a panel of the GATT ruled that Canada's Foreign Investment Review Agency (FIRA) had breached Article III of the Agreement by allowing approval of foreign investment on condition that the companies signed agreements to favour Canadian goods and companies over those from abroad. The GATT ruling did not dispute FIRA's right to limit foreign investment, but the requirement that domestic goods be favoured violated the principle of non-discrimination (as defined under "National Treatment"). Canada accepted the GATT ruling on the FIRA requirement.

The concept of "national treatment," whether it refers to Article III of the GATT or to the OECD declaration, requires that foreign goods or foreign-controlled enterprises (foreign capital) already in the country be afforded equivalent treatment to that for domestic goods or enterprises. Where the investment section of the Free Trade Agreement extends beyond the minimum requirements of "national treatment," is in moving even closer to full non-discriminatory treatment of American capital by reducing the restrictions on U.S. inflows.

The grandfathering of existing laws and regulations means, however, that changes to the Investment Canada Act will not include the oil and gas and uranium sectors and that existing exceptions to national treatment found in Canadian and U.S. law may continue.

With respect to the loosening of Canadian restrictions on inflows of U.S. investment, it is important to recognize that a) in general, U.S. ownership and control of Canadian industry has been declining since 1970; b) the stock of Canadian direct investment in the U.S. has been

growing faster than U.S. direct investment in Canada; and c) U.S. direct investment in Canada has primarily been flowing outward in recent years.

2. Cultural Industries

Canadian cultural industries are largely exempt from the Agreement. They include:

- the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine readable form not including printing or typesetting;
- the production, distribution, sale or exhibition of film or video recordings;
- the production, distribution, sale or exhibition of audio or video music recordings;
- the publication, distribution, sale of music in print or machine readable form; or
- radio communication intended for direct reception by the general public including all radio, television and cable television broadcasting, all satellite programming and broadcast network services.

Canada agreed:

- to revise its copyright law to provide protection to the retransmission of copyright programming;
- to remove the "print in Canada" requirement for eligible advertising expenses which can be deducted for income tax purposes.

Although cultural industries are exempted from the provisions of the Agreement, fair open market value will be offered to the owners of a U.S.-controlled business in a cultural industry in the event of a forced divestiture to Canadians. Further, actions which are inconsistent with the Agreement except for the exemption would permit the other Party to take measures of equivalent commercial effect.

Comments

In return for concessions on compensation for unauthorized retransmission of broadcast signals by Canadian cable television companies,

Canadian negotiators fended off U.S. demands for tax deductibility of foreign advertising expenses and on U.S. investment access to Canadian cultural industries.

Also untouched was the Canadian practice of "simultaneous substitution" of Canadian advertising by cable companies during commercial breaks in U.S. television shows. However, the elimination of the 13.5% tariff on imported U.S. recorded tapes and records disturbs the Canadian recording industry. Currently, over 90% of recordings are manufactured or pressed in Canada.

Canada also appears to have maintained the right to set Canadian content requirements for domestic television programs, while the Canadian book publishing policy also remains intact.

The removal of the "print in Canada" requirement for eligible advertising expenses is a relatively modest concession. Periodicals will still be required to maintain 75% Canadian ownership and 80% Canadian content, as specified under Bill C-58, in order for advertising expenses to be deductible for income tax purposes.

Reportedly, the government had already drafted legislation that would curb U.S. ownership of film distribution in Canada. It is uncertain whether this proposed legislation will be introduced now, with the Free Trade Agreement not yet implemented. Briefing documents, apparently prepared for U.S. Treasury Secretary James Baker and made public, indicated that Canadian negotiators had "promised to solve Jack Valenti's problem on film distribution." Mr. Valenti, President of the Motion Picture Association of America, has vigorously opposed the Canadian government's proposed film distribution legislation.

3. Temporary Entry for Business Persons

The two Parties agreed to facilitate temporary entry of each other's business persons on a reciprocal basis. The Agreement provides for the temporary entry of business visitors, traders and investors, professionals and intra-company transferees without their having to meet labour certification tests and submit to other procedures. Schedule 1 of the Chapter sets out the types of activities which would allow entrants to

qualify as business visitors. Schedule 2 lists the professions whose members would qualify for temporary entry as professionals.

Comments

Facilitation of inter-country flows of temporary business visitors is especially important if the Agreement's provisions respecting the reduction of barriers to trade in services such as management consulting are to be effective.

Removal of the need to obtain labour certification tests for temporary business entry is also significant. Such certification usually takes from three to six months, during which time applicants must satisfy the authorities that no citizens or permanent residents are able to fill the position in question.

4. Government Procurement

The two countries have agreed to eliminate buy-national restrictions on procurements covered by the GATT Agreement on Government Procurement (the "Code") below the threshold outlined in the Code.

Upon implementation of the Agreement, certain procurements over \$25,000 (U.S.) in value will be open to Canadian and/or U.S. suppliers.

Fair and equitable treatment for foreign suppliers is provided through enhanced transparency procedures and the establishment of principles governing the bid challenge system.

There are also provisions for the regular exchange of government procurement information. The U.S. Departments of Energy and Transport and the Canadian Departments of Transport, Communications and Fisheries and Oceans are not covered by these provisions. Only certain defence procurements by each country are covered.

Comments

The amount of procurement opened up to Canadian suppliers is likely to be a relatively modest share of all United States federal government tenders to business, which are estimated to total more than \$200 billion annually. The reduction of the procurement threshold to

\$25,000 (U.S.) or greater is a significant improvement, however, over the level of \$171,000 (U.S.) stipulated in the Code. With some exceptions, all government purchases above this threshold will be open to competition. It appears that the procurement provisions of the Agreement do not apply to the provinces, states and municipalities, since these lower tiers of government do not at present fall within the ambit of the GATT Code.

The largest share of defence procurement remains outside the provisions of the Agreement, as major defence spending stays within the Canada-U.S. production-sharing agreement.

5. Intellectual Property

Canada has agreed to revise its copyright law to provide protection to the retransmission of copyright programming.

The Parties have agreed to cooperate in the Uruguay Round of multilateral trade negotiations and in other international forums to improve protection of intellectual property.

Comments

In 1986, the Canadian government announced its intention to amend the Copyright Act to provide for compensation to the originators of broadcast signals. The Agreement does no more than confirm this policy. Under the proposed changes, Canadian cable television companies would be required to pay for the right to retransmit U.S. television signals.

The 8 October 1987 U.S. version of the summary of the Free Trade Agreement also states that, "The Parties will work to make their laws more fully compatible..." The Canadian government had already been moving towards this end by: amending the Patent Act with Bill C-22; amending the Copyright Act through the introduction of Bill C-60, which enhances copyright protection for work by authors, artists and producers of computer software; and by introducing Bill C-107, which includes protection of plant breeders' rights.

The most controversial change to Canadian intellectual property rights involves the extension of pharmaceutical patent protection under Bill C-22. A summary of the Free Trade Agreement released on

4 October by the U.S. Trade Representative's Office stated that Canada had agreed to provide protection of pharmaceuticals by liberalizing compulsory licensing provisions. This has led some to suggest that the controversial changes to compulsory licensing found in Bill C-22 were a quid pro quo for the achievement of a Free Trade Agreement with the United States. Briefing papers prepared for U.S. Treasury Secretary James Baker and made public, have led to further allegations in this regard. The government and trade negotiations officials have repeatedly denied any connection between the Free Trade Agreement and Bill C-22.

E. Sectoral Aspects

1. Agriculture

The two sides agreed to eliminate all agricultural tariffs within 10 years while allowing for a temporary restoration of tariffs on fresh fruit and vegetables for a 20-year period. It was also agreed that:

- bilateral quantitative import restrictions on meat will not be introduced;
- export subsidies will be prohibited on bilateral agricultural shipments and the two sides will work together to eliminate on a global basis all subsidies which distort agricultural trade;
- Canada will eliminate its Western Grain Transportation Act subsidies on agricultural products shipped to the U.S. through western Canadian ports;
- once U.S. government support for wheat, oats or barley becomes equal to or less than the level of Canadian government support, Canada will eliminate import permit requirements for these grains;
- Canadian global import quotas on chicken, turkey and eggs are set at average levels of imports over the past five years;
- Canada will be exempt from any future U.S. quantitative import restrictions on products containing 10% or less sugar;

- the two Parties will work towards the harmonization of technical regulations and standards for agricultural, food, beverage and certain related goods.

Comments

Representatives of the agricultural sector are divided as to the impact of free trade on farmers. A representative of the National Farmers' Union, which is ideologically opposed to free trade, asserts that "the erosion of the marketing boards has begun." On the other side of the issue, the executive vice-president of the Canadian Cattlemen's Association feels that agriculture has no cause for complaint.

While tariffs on fresh fruit and vegetables will be phased out within 20 years (rather than 10 years as in other sectors), produce farmers are still concerned that free trade will harm their ability to sell into the Canadian market at harvest time.

In order to avoid the Agreement's being defeated by strong agricultural lobbies, it was imperative that the Canadian supply management program for dairy products and the poultry and egg marketing boards remain intact. The FTA permits the maintenance of these programs and the government has strengthened the control of the Canadian Dairy Commission over the market by adding ice cream, yogurt, skim milk and buttermilk to the Import Control List.

While defending the interests of farmers, maintenance of supply management and marketing boards ensures that Canadian food processors will face higher input costs for such products than their American competitors. Canadian food processors have complained that this will place them at a competitive disadvantage once Canadian tariffs are eliminated on certain processed foods.

2. Alcoholic Beverages

Beer and malt-containing beverages are excluded from the provisions of the Agreement, while wine and wine-containing beverages and spirits and spirits-containing beverages are included.

Listing measures by both Parties for alcoholic products covered by the Agreement will be non-discriminatory, transparent, and

provide for prompt decision on any listing application and prompt notification of any decision.

The difference in price between imported and local products must reflect the cost differential between the two.

The price differential for wine will be phased out within six years according to the following schedule: 25% upon implementation of the Agreement; 25% at the beginning of the second year; and 10% per year over the next five years.

Comments

According to the Brewers' Association of Canada, free trade in beer would have been disastrous for the Canadian industry. Provincial restrictions have limited Canadian brewing operations to a scale much smaller than that of American operations, and unused brewing capacity in the U.S. is said to be running at about three times the size of the entire Canadian beer market.

The provisions of the Agreement relating to wine are expected to cause considerable damage to the Canadian wine industry. The industry currently employs about 1,800 workers in the nation's 54 wineries, with a further 3,500 growers supplying grapes. Some of the smaller British Columbia wineries which produce high-quality wines may be able to compete with similar quality wines from California, but much of the Ontario industry producing commercial grade wines is extremely vulnerable to low-cost U.S. competition.

Canadian distilleries remain unconcerned by their loss of protection. The industry currently exports about one-half of its production to the U.S., and bourbon, the leading American spirit, does not sell particularly well in this country.

Implementation of this section of the Agreement may prove to be the most problematic. Jurisdiction over liquor and wine sales remains a provincial responsibility and the Ontario government has threatened to refuse to implement the wine pricing provisions of the Agreement. This is despite a GATT ruling that Ontario's pricing policies are discriminatory.

3. Automotive Trade

The key points of agreement are:

- elimination over 10 years of all bilateral tariffs on original equipment and tires, and over five years on aftermarket parts;
- phase-out over five years of the Canadian embargo on the import of American used cars;
- termination of duty waivers linked to exports to the other Party upon implementation of the Agreement and elimination of Canadian production-based duty waivers by 1996;
- no additional Canadian companies producing vehicles will qualify as eligible manufacturers under provisions similar to those of the Auto Pact;
- vehicles traded under the FTA must have incurred 50% of direct manufacturing costs in North America; and
- a select Panel will be established to assess the auto industry and to propose public policy and private initiatives.

Comments

The changes to the rules for automotive trade are extremely controversial, given repeated claims by the government that the Auto Pact was not on the negotiating table. Opponents of free trade, such as Bob White, President of the Canadian Auto Workers, have stated that the elimination of all automotive tariffs effectively guts the Auto Pact by removing the incentive for automakers to meet the production safeguards built into the Pact. The elimination of the duty remission payments to foreign car manufacturers who set up in Canada is likely to hurt future Japanese investment in Canadian automotive facilities, according to critics.

Canada's chief trade negotiator, Simon Reisman, countered criticism that the Free Trade Agreement destroys the Auto Pact by noting that the existing safeguards of the Pact remain intact. Furthermore, the addition of a 50% rule of origin on direct costs means that carmakers

(including the Japanese) will need to incur costs in North America equivalent to about 70% of the appraised customs value in order to meet the required level of North American content. (Fifty percent direct manufacturing costs, which do not include overhead and profit, are estimated to translate into about 70% of overall costs once profit and overhead are included.)

With respect to the argument that the Auto Pact has been "defanged" by the elimination of all automotive tariffs, two points need to be made. First, the major automobile manufacturers as a group have been exceeding by substantial margins the minimum Canadian value-added and production-to-sales ratios safeguards enshrined in the Auto Pact. The reason for this, according to Mr. Reisman, is the efficiency of the Canadian automotive industry. Second, to the extent that automakers exceed the minimum safeguard levels, the Free Trade Agreement still permits them to import automotive products from third countries duty-free. This saves automakers almost \$300 million per year, providing an incentive for them to continue to meet the safeguards.

4. Energy

The two Parties agreed:

- to affirm their GATT rights and obligations with respect to bilateral energy trade including prohibitions on quantitative restrictions or minimum export price requirements;
- to prohibit discriminatory export taxes on shipments of energy goods to the other Party;
- not to restrict the proportion of total energy shipments available to the other Party relative to the total supply of that good and not to impose a higher price than is available domestically;
- to engage in consultations if energy regulatory actions by one Party result in discriminatory action;
- to allow incentives for oil and gas exploration, development and related activities;

- not to allow restrictions on imports or exports of energy goods except for specified national security reasons.

The United States agreed:

- to exempt Canada from the legislative restriction on the enrichment of foreign uranium;
- to allow up to 50,000 barrels/day of Alaskan oil exports to Canada;
- to cause the Bonneville Power Administration to modify its policy so as to afford British Columbia Hydro favourable treatment.

Canada agreed:

- to eliminate its "least cost alternative test" for energy exports;
- to exempt the U.S. from the Canadian Uranium Upgrading Policy.

Comments

In this section, Canada traded a guarantee of continued U.S. access to Canadian energy supplies for secure access for Canadian energy exports to the U.S. market. For Canadian negotiators, gaining such secure access was extremely important. In October 1986, the U.S. imposed a levy of 11.7 cents (U.S.) per barrel on shipments of foreign oil and oil products, forcing Canada to raise the matter with GATT. Further, the Senate version of the U.S. omnibus trade bill has the potential to limit Canadian oil exports to the U.S. as it calls on the President to cap oil imports at 50% of domestic consumption. In December 1987, independent U.S. oil and gas producers filed a petition with the U.S. Commerce Department for relief from low cost foreign petroleum imports. Canadian negotiators must also have been concerned about the rising volume of complaints from U.S. producers of hydro-electricity, uranium and natural gas against Canadian imports of these products.

According to critics, the energy provisions will restrict the government's ability to establish insular energy policies based on two-tier pricing favouring the domestic market and to secure Canadian

energy supplies solely for domestic consumption. This repudiation of the National Energy Policy (NEP) has offended Canadian economic nationalists who contend that energy supplies should be preserved for domestic use. Further, they argue, restricting the ability to set Canadian energy prices below world prices dissolves an important potential industrial edge.

On the other hand, economists have argued that providing below world oil prices to domestic users represented a subsidy to consumers that discouraged conservation and the search for conventional as well as alternative energy sources. They also point out that there are better, more efficient, instruments for achieving the social policy goals at which two-tier pricing was aimed.

With respect to sharing Canadian energy supplies with the U.S., as a member of the International Energy Agency (IEA), Canada is obliged under that Agency's Energy Sharing System (ESS) to abide by supply sharing provisions that are generally more stringent than those imposed by the Canada-U.S. Free Trade Agreement. The FTA states that in the event of any unavoidable inconsistency between the IEP and the Agreement, the provisions of the IEP shall prevail.

The grandfathering of the existing investment laws and policies means that present Canadian rules governing the takeover of Canadian energy firms will be maintained. Further, Canadian ownership requirements for production licences for projects on Canadian frontier lands, as provided for in the Canada Petroleum Resources Act, may also continue under Canada-U.S. free trade.

The oil industry and the governments in the major energy-exporting provinces of Alberta and Quebec support the energy provisions of the Free Trade Agreement. The government of Manitoba, however, whose province also exports significant amounts of hydro-electricity, does not do so.

5. Financial Services

- Canada has agreed that purchases by U.S. investors of Canadian-controlled financial institutions shall not be subject to restrictions that limit foreign ownership.

- Canada further agreed to exempt U.S. bank subsidiaries from limitations on the total domestic assets of foreign bank subsidiaries.
- Each country is committed to extend financial market rule liberalizations to the other Party.
- Canadian banks will be permitted to purchase, deal and underwrite Canadian government securities in the U.S. market.
- Canadian financial institutions will be accorded the same treatment as U.S. financial institutions with respect to any changes in the Glass-Steagall Act (see p. 35).

Comments

The Free Trade Agreement will allow U.S. investors to own up to 100% of Canadian financial institutions. At present, there is a 25% limit on foreign ownership of federally-regulated Canadian-controlled financial institutions while no individual non-resident shareholder may acquire more than 10% of these institutions' equity. The 25% limit will be cancelled, although individual shareholders will still be restricted to owning 10% of a Schedule A bank's equity. In addition, the present 16% cap on the level of total domestic assets of all foreign-owned banks will be lifted for U.S.-owned Schedule B banks.

It has been suggested that the Free Trade Agreement will allow U.S. investors an almost unfettered ability to purchase Canadian banks, trust companies, insurance companies and brokerage firms. While theoretically it will be possible for complete American ownership of a Schedule A bank, the 10% individual ownership limit makes it impossible to own one outright, thus making such banks less attractive acquisition targets for large U.S.-owned financial institutions. Similarly, owners of Schedule B banks, in order to convert them to Schedule A banks, will be required to reduce their individual ownership to 10% of equity. It is uncertain whether U.S.-owned Schedule B banks will choose instead to increase their size to take advantage of the Agreement's exemption from the 16% limit on assets, as the restriction is not effectively constraining them now.

While the purchase by U.S. financial institutions of 100% of Canadian insurance and trust companies will be permitted under the Agreement, it should be noted that the government has indicated that it intends to introduce legislation providing for ministerial review of takeovers of such companies. (The discussion draft on proposed legislation to revise and amend the law governing federal trust and loan companies contains such a provision.) Under free trade, this provision should apply equally to takeovers by both foreign and domestically-controlled firms.

With respect to investment dealers, the Free Trade Agreement changes little. Regulation of the industry is primarily a provincial responsibility, and the Ontario government announced in 1986 that the limitation on foreign ownership of an investment firm would be lifted to 50% on 30 June 1987 and eliminated completely on 30 June 1988. This was in response to similar moves by Quebec to liberalize foreign ownership limitations in that province.

Currently in the U.S., federally chartered banks are prohibited by the Glass-Steagall Act from dealing in or underwriting most types of securities. Canadian law, on the other hand, permits the chartered banks to compete in this area by buying and selling securities. The Free Trade Agreement, then, would allow U.S. banks operating in Canada to engage in activities prohibited to Canadian banks in the U.S.

Two separate bills now under consideration in the U.S. Senate, however, would repeal Glass-Steagall Act prohibitions on mixing banking and securities activities. The Free Trade Agreement ensures that Canadian financial institutions will be accorded treatment similar to that of U.S. institutions when such repeal has taken place.

6. Services

Each Party has agreed:

- to treat persons of the other Party no less favourably than its own persons with respect to the measures covered by this Chapter;
- that no arbitrary or unjustifiable discriminatory measure should be introduced restricting bilateral trade in services;

- that mutual recognition of licensing and certification requirements for services shall be encouraged;
- to review periodically and consult on the inclusion of additional services in the Agreement.

The annexes to the Chapter list specific services and sectors covered by the Agreement. The sectors include architecture, tourism, computer services and enhanced telecommunications services.

Comments

Given the dramatic growth in the service sector in recent years, agreement to work out a new set of rules facilitating trade in this area is significant. The Uruguay Round of the GATT negotiations has identified trade in services as a key area for discussion. The Canada-U.S. FTA may pave the way for agreement on multilateral trade in services.

Critics of the Free Trade Agreement suggest that this will drain Canadian employment in the service sector as it becomes easier for U.S. professionals to gain access to the Canadian market. Canadian management consultants and other professionals, however, have contended for some time that they do not have the same access to the United States market as American professionals have to the Canadian. The Free Trade Agreement would provide an initial step towards correcting this imbalance, though barriers to entry are likely to be resilient for professions such as accounting, engineering and the law, which require state or provincial licensing.

7. Transportation

As a result of pressure from the U.S. shipping lobby that it be entirely excluded from the Free Trade Agreement and resistance from the Canadian trucking industry, negotiators were forced to scrap the transportation provisions of the Agreement.

REACTION TO THE AGREEMENT

The Free Trade Agreement is encountering heavy opposition from the Liberal and New Democratic Parties, which charge that sections of the Pact, particularly those dealing with energy, investment and culture, have reduced Canadian sovereignty. Both Opposition parties have requested that the government call an election on the issue. Although the government is not technically bound to consult Parliament on a trade treaty, a number of separate Acts must be amended in order to allow implementation of the provisions of the Agreement and the importance of the issue requires that it receive thorough public scrutiny. Accordingly, the Prime Minister has indicated that there will be "ample time" for Commons debate.

The House of Commons Standing Committee on External Affairs and International Trade, after five weeks of public hearings on the Agreement, issued a report in December 1987. The majority view of the Committee was "that the Free Trade Agreement is a good deal for Canada." The Liberal and New Democratic Party members of the Committee issued minority opinions strongly opposing the deal and criticizing the Committee's hearing process.

The government has stated that the Free Trade Agreement is predominantly in the federal domain and that provincial assent is not necessary to implement it. While this is true, certain areas of the Agreement are a provincial responsibility. One example is the sale of wines and liquors; the Ontario government has threatened not to implement the relevant provisions of the Agreement.

Since the preliminary version of the Agreement was signed on 4 October 1987, support from the provincial premiers has grown. Initially, five provincial premiers, those from Alberta, British Columbia, Saskatchewan, Quebec and New Brunswick, supported the deal. When the New Brunswick government changed soon after the deal was signed, however, this province's new premier, Frank McKenna, joined the undecided premiers from Newfoundland and Nova Scotia. All three premiers have now come out in support of the Agreement, leaving the premiers from Ontario, Manitoba and Prince Edward Island in opposition.

CHRONOLOGY

- 24 March 1982 - The Standing Senate Committee on Foreign Affairs released the third volume of its report on Canada-U.S. relations. Entitled Canada's Trade Relations with the United States, its major recommendation was that Canada should begin negotiations to ensure bilateral free trade between Canada and the U.S. in all sectors.
- 13 August 1983 - International Trade Minister Gerald Regan issued Canadian Trade Policy for the 80s. This is the most comprehensive document ever published on Canada's trade policy. Among its themes was a rejection of the Senate's earlier proposal for general free trade. Instead, it was suggested that Canada should begin discussions with the U.S. on the possibility of entering into a number of sectoral free trade agreements.
- 13 September 1983 - U.S. State Department appointed Mr. James M. Medas as a new deputy assistant secretary with specific responsibilities for Canadian affairs. The State Department regional desk title was simultaneously changed from the Bureau of European Affairs to the Bureau of European and Canadian Affairs. This change was widely interpreted as an upgrading of Canadian interests in Washington.
- 12-13 December 1983 - Canadian and U.S. trade officials met in Washington to begin exploratory talks on sectoral free trade negotiations.
- 30 October 1984 - U.S. Trade and Tariff Act of 1984 was signed into law. It allowed the Administration the authority to negotiate a bilateral Free Trade Agreement with Canada.
- 18 March 1985 - Prime Minister Mulroney and President Reagan met in Quebec City and issued a "Declaration on Trade" which sought to resolve existing trading irritants and explore possibilities for increased trade between the two countries.
- August 1985 - The Special Joint Committee on International Relations released the Interim Report Pertaining to Bilateral Trade with the United States and Canada's Participation in Research on the Strategic Defense Initiative. The Committee recommended that immediate bilateral trade discussions with the U.S. should begin, while at the same time, Canada should also pursue new multilateral negotiations.

- 5 September 1985 - The Royal Commission on the Economic Union and Development Prospects for Canada (the Macdonald Commission) recommended freer trade with the U.S.
- 26 September 1985 - Prime Minister Mulroney announced that he had told President Reagan that Canada wanted to negotiate "the broadest possible package of mutually beneficial reductions in tariff and non-tariff barriers between our two countries."
- 8 November 1985 - Simon Reisman was appointed Ambassador and Chairman for the Preparatory Committee for Trade Negotiations.
- 10 December 1985 - President Reagan notified Congress of the intent to seek free trade with Canada under "fast-track" authority. Congress had 60 days to respond.
- 23 April 1986 - The Senate Finance Committee returned a split vote (10-10) on the Administration's negotiating authority. This allowed the exploratory talks to begin but was not an auspicious launch.
- 21-22 May 1986 - Canadian negotiators led by Simon Reisman and U.S. negotiators led by Peter Murphy began preliminary trade negotiations.
- 22 May 1986 - U.S. government imposed 35% tariff on Canadian exports of cedar shingles and shakes to the U.S. The tariff became effective 6 June 1986.
- 2 June 1986 - Prime Minister Mulroney met with the provincial premiers and obtained agreement on a unified approach to the free trade negotiations in return for approval to hold first ministers' conferences every three months to reassess the progress of the negotiations.
- 3 June 1986 - The Canadian government announced retaliatory tariff increases on exports of U.S. computer parts and publications to Canada.
- 17-19 June 1986 - The second round of exploratory free trade talks was held in Washington.
- 26 June 1986 - The U.S. International Trade Commission delivered a unanimous ruling that Canadian softwood lumber exports were causing material harm to U.S. producers. This triggered an inquiry by the U.S. Commerce Department on whether Canadian producers were being unfairly subsidized.

- 30 June 1986 - The Honourable Pat Carney was appointed Minister of International Trade.
- 29-31 July 1986 - The third round of exploratory free trade talks was held at Mont-Tremblant, Quebec.
- 1 August 1986 - President Reagan signed a Senate bill that allowed the United States to subsidize wheat sales to the U.S.S.R. and China.
- 3-5 September 1986 - The fourth round of exploratory free trade talks was held in Ottawa and Meech Lake.
- 17 September 1986 - The Prime Minister and provincial premiers held the first of their agreed meetings to assess the progress of the negotiations.
- 20 September 1986 - The GATT ministers, meeting in Punta del Este, Uruguay, agreed to an agenda for the GATT negotiations.
- 24 September 1986 - The fifth round of exploratory free trade negotiations began in Washington.
- 30 September 1986 - Canada offered to raise stumpage fees and other charges levied on lumber if the U.S. would agree to drop its countervailing duty case against imports of Canadian lumber. The offer was declined.
- 16 October 1986 - The U.S. Department of Commerce found, in a preliminary ruling, that Canadian softwood lumber exports to the U.S. were being subsidized by 15% of their value.
- 27 October 1986 - Canada protested to GATT the U.S. imposition of an import surtax and an oil levy.
- 7 November 1986 - Revenue Canada imposed a countervailing duty of \$1.05 (U.S.) a bushel on imports of U.S. corn.
- 12-14 November 1986 - Three days of free trade negotiations began in Ottawa.
- 21 November 1986 - The provincial premiers met behind closed doors in Vancouver with chief free trade negotiator Simon Reisman and Canadian ambassador to Washington Allan Gotlieb, to discuss the progress of the free trade negotiations.
- 1 December 1986 - A surtax of 0.22% was imposed on all imports into the United States.

- 9 December 1986 - Four U.S. Senators arrived in Ottawa to express support for a Canada-U.S. Free Trade Agreement.
- 16-18 December 1986 - Three days of free trade negotiations began in Washington.
- 30 December 1986 - The Canadian government agreed to impose a 15% duty on softwood lumber exports to the United States in return for the U.S. lumber coalition dropping its countervailing duty case.
- 31 December 1986 - President Reagan approved an interim U.S. tax on Canadian softwood lumber imports.
- 8 January 1987 - The Canadian softwood lumber export tax took effect.
- 15 January 1987 - Canada's chief free trade negotiator, Simon Reisman, met with his U.S. counterpart, Peter Murphy, for one day of talks in Washington.
- 16 January 1987 - Canada's chief free trade negotiator, Simon Reisman, met with U.S. Treasury Department officials in Washington to discuss trade in financial services.
- 19 January 1987 - A Ways and Means Motion was introduced in the House of Commons to impose a 15% duty on softwood lumber exports to the United States, retroactive to 8 January 1987.
- 21 January 1987 - U.S. Vice-President George Bush and Treasury Secretary James Baker arrived in Ottawa to show support for a Free Trade Agreement.
- 27 January 1987 - President Reagan promised in his State of the Union address to complete a Canada-U.S. free trade arrangement.
- 2 February 1987 - Revenue Canada, in a final ruling, cut the duty on imports of U.S. corn by 20¢ (U.S.) per bushel.
- 3 February 1987 - A bill was introduced in the U.S. Congress that would force Canada to work out a voluntary export restraint agreement for steel.
- 5 February 1987 - Legislation was tabled in the U.S. Congress that would lock the President into following U.S. International Trade Commission trade recommendations.
- 10 February 1987 - An anti-dumping case was filed in the U.S. against Canadian potash exports.

- 18 February 1987 - Lifting of Canadian retaliatory tariffs on imports of U.S. Christmas trees, computer parts and publications was announced.
- 19-20 February 1987 - Canada's chief free trade negotiator, Simon Reisman, met with his U.S. counterpart, Peter Murphy, for two days of talks in Washington.
- 3 March 1987 - A U.S. cabinet meeting reportedly identified a free trade pact as one of two major goals for the last two years of the Reagan presidency.
- 11 March 1987 - The First Ministers met in Ottawa to receive a progress report on the free trade negotiations.
- 16 March 1987 - Canada's chief free trade negotiator, Simon Reisman, met with his U.S. counterpart, Peter Murphy, for one day of talks in Ottawa.
- 16 March 1987 - The House of Commons held a debate on the Canada-U.S. free trade negotiations.
- 17 March 1987 - The House of Commons passed a government motion supporting the free trade negotiations and defeated a Liberal party-sponsored amendment.
- 19 March 1987 - Formation of the Canadian Alliance for Trade and Job Opportunities to promote free trade was announced.
- 23 March 1987 - The U.S. International Trade Commission ruled that imports of Canadian potash were harming the U.S. industry.
- 25 March 1987 - The U.S. International Trade Commission ruled that IPSCO line pipe and tube steel imports were not injuring U.S. producers.
- 26 March 1987 - The U.S. Senate passed a motion opposing the Canadian duty on imports of U.S. corn.
- 5-6 April 1987 - President Reagan visited Ottawa and publicly endorsed the free trade negotiations.
- 8-10 April 1987 - Canadian and U.S. trade negotiators met in Washington for discussions.
- 27-29 April 1987 - Canadian and U.S. trade negotiators spent three days in Ottawa discussing trade issues.
- 30 April 1987 - The U.S. House of Representatives passed a restrictive omnibus trade bill.

- 18-20 May 1987 - Canadian and U.S. trade negotiators met at Meech Lake for discussions.
- 15-16 June 1987 - Negotiators continued their trade discussions in Washington.
- 22-23 June 1987 - Negotiators completed two days of trade discussions in Ottawa.
- 29 June 1987 - One day of trade negotiations was completed in Ottawa.
- 7 July 1987 - The Prime Minister and the premiers met in Ottawa to receive a progress report on the negotiations.
- 14-15 July 1987 - Negotiators met in Washington.
- 20 July 1987 - Negotiations continued in Ottawa.
- 5-6 August 1987 - Negotiations continued in Washington.
- 21 August 1987 - Preliminary penalty duties of 9.1% to 85.2% were imposed by the U.S. Commerce Department on imports of Canadian potash.
- 24-27 August 1987 - Free trade meetings continued in Cornwall.
- 10-11 September 1987 - Free trade meetings held in Washington.
- 21-23 September 1987 - Free trade negotiations held in Washington.
- 23 September 1987 - Canadian negotiator Simon Reisman walked out of the free trade talks, suspending negotiations.
- 28 September 1987 - International Trade Minister Pat Carney, Finance Minister Michael Wilson and the Prime Minister's Chief of Staff, Derek Burney, met with U.S. Treasury Secretary James Baker and U.S. Trade Representative Clayton Yeutter to decide on a resumption of negotiations.
- 2 October 1987 - First Ministers' meeting held in Ottawa.
- 2-3 October 1987 - Final negotiations session held in Washington.
- 3 October 1987 - A Free Trade Agreement was reached in Washington.

- 10 December 1987 - The House of Commons Standing Committee on External Affairs and International Trade issued its report on the Elements of the Agreement.
- 10 December 1987 - The text of the Free Trade Agreement was initialled.
- 3 January 1988 - Prime Minister Mulroney and President Reagan signed the Canada-U.S. Free Trade Agreement.

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